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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLY BALDO PINEDA,

Defendant and Appellant.

B207956

(Los Angeles County  
Super. Ct. No. YA069762)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Hector M. Guzman, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Yun K. Lee  
and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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Willy Baldo Pineda was convicted by a jury of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> and battery resulting in serious bodily injury (§ 243, subd. (d)) and sentenced to three years in state prison. On appeal Pineda contends the court erred in excluding evidence pursuant to Evidence Code section 352 that was relevant to his self-defense claim and in denying his request for probation. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Evidence at Trial*

Rigoberto Rodriguez, Jr. was at the Radium Open Air Market in Torrance helping his father unload merchandise for sale. According to the prosecution's evidence, Pineda approached Rodriguez and falsely accused him of stealing Pineda's compact discs and writing on his truck. Pineda threatened to kill Rodriguez and then went to his truck to retrieve something. Rodriguez became frightened and fled. Pineda and another man, known as Cholo, chased Rodriguez in Cholo's car. When the two men caught up with Rodriguez, Pineda ran from the car while Cholo drove the car to block Rodriguez's escape. Cornered by the two men, Rodriguez screamed for help and again tried to run away. Pineda beat Rodriguez with a tire iron. Cholo stabbed Rodriguez several times with a gardening tool with a sickle-shaped blade causing significant bleeding and eventual scarring. Pineda told police during an interview he had grabbed the tool from one of the tables at the open air market when he was chasing Rodriguez.

Pineda, who testified at trial in his own defense, offered a markedly different version of events. According to Pineda, Rodriguez knew Pineda typically carried between \$2,000 and \$3,000 in cash to conduct his business at the swap meet. Rodriguez demanded Pineda give Rodriguez the money. Pineda refused. Later, a customer told Pineda some "punks" were spray-painting his truck. He looked and saw Rodriguez near his truck, holding a cup of coffee and a small knife blade in his hand. Pineda confronted him. Rodriguez swung at Pineda with the hand that held the coffee and the knife blade and then seized the small pack Pineda used to carry his cash receipts. Pineda shouted to

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise indicated.

bystanders to call the police because he had been robbed. Pineda followed Rodriguez and managed to grab hold of him. Rodriguez dropped the pack and ran away. Pineda told a passerby whom he did not know (later identified as Cholo) that Rodriguez had robbed him and was getting away. Pineda wanted to catch Rodriguez and have him arrested. He and Cholo chased Rodriguez in Cholo's car. When they caught up with him, Pineda grabbed the tire iron from Cholo's car in case he needed to defend himself and ran from the car to confront Rodriguez. He did not know Cholo would follow, nor did he know Cholo had a knife or other sharp object. He hit Rodriguez with the tire iron in self-defense because earlier Rodriguez had a knife and Pineda was afraid Rodriguez would use it to harm him.

## *2. The Jury's Verdict and Sentence*

The jury found Pineda guilty of assault with a deadly weapon and battery resulting in serious bodily injury. The court denied Pineda's request for probation and sentenced him to three years in state prison for the aggravated assault (the middle term). The sentence for the battery was stayed pursuant to section 654.

## **DISCUSSION**

### *1. The Trial Court Did Not Err in Excluding Evidence Pineda Had Been the Victim of a Violent Crime in 2003*

#### *a. Relevant proceedings*

In a pretrial hearing pursuant to Evidence Code section 402, the trial court considered Pineda's request to introduce evidence at trial that he had been attacked in 2003 with a hammer and knife by several individuals after he had reported them to police for spray-painting graffiti on a building. Pineda acknowledged there was no connection between the individuals who attacked him in 2003 and Rodriguez, but argued the 2003 attack was relevant to his self-defense claim because it explained why he felt afraid of Rodriguez even after Rodriguez had run away. According to the defense theory, Pineda believed Rodriguez, like his attackers five years earlier, would return to harm him. The trial court excluded the evidence under Evidence Code section 352, concluding the 2003

attack was too “remote and tenuous” and evidence concerning the unrelated incident would be “confusing and misleading” to the jury.

b. *Governing law*

i. *Self-defense*

To justify an act of self-defense, the defendant must have an honest and reasonable belief that bodily injury is about to be inflicted on him or her and use only that force that is reasonable under the circumstances to protect against the danger. (*People v. Pinholster* (1992) 1 Cal.4th 865, 966.) Whether the defendant’s conduct was reasonable under the circumstances is determined from the point of view of a reasonable person in the defendant’s position. (See *People v. Minifie* (1996) 13 Cal.4th 1055, 1065 [although the test of reasonableness is an objective one, the “reasonableness is determined from the point of view of a *reasonable* person in the defendant’s position”].) Thus, the jury is entitled to consider all the ““““facts and circumstances . . . in determining whether the defendant acted in a manner in which a *reasonable* [person] would act in protecting”””” himself or herself. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1083; see *Minifie*, at p. 1065 [“[a] person claiming self-defense is required to “prove his own frame of mind,” and in so doing is “entitled to corroborate his testimony that he was in fear for his life by proving the reasonableness of such fear”””].)

Evidence the victim had threatened or assaulted the defendant on a previous occasion is admissible to support a claim of self-defense because, under such circumstances, it may have been reasonable for the defendant to have been on “heightened alert upon encountering that threatener, and to reasonably take [the prior threat or assault] into account in deciding the necessity for, and the amount of, defensive action, in response to any act on the part of the threatener reasonably appearing to be calculated to carry out that threat.” (*People v. Minifie*, *supra*, 13 Cal.4th at pp. 1064-1065; see also *People v. Humphrey*, *supra*, 13 Cal.4th at p. 1083.) The same rationale applies when the victim is not the same person who assaulted or threatened the defendant in the past but is a close associate of that person. (*Minifie*, at p. 1065.)

ii. *Evidence Code section 352*

A trial court may exclude evidence under Evidence Code section 352 when “its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” We review the trial court’s ruling under Evidence Code section 352 for abuse of discretion. (*People v. Avila* (2006) 38 Cal.4th 491, 578.)

c. *The court did not abuse its discretion in excluding the evidence*

Pineda likens his situation to one of a battered spouse or partner and contends, as a result of the 2003 attack, he had a reasonable fear that Rodriguez, like his prior attackers, would return to kill him. Unlike situations involving battered spouses or partners (*People v. Humphrey, supra*, 13 Cal.4th 1073), or those involving a prior assault on the defendant by the victim or a close associate of the victim (*People v. Minifrie, supra*, 13 Cal.4th 1055), there was no evidence Rodriguez or any of his acquaintances was responsible for the 2003 attack against Pineda; nor was there any evidence Pineda reasonably believed there was an association between Pineda’s prior attackers and Rodriguez. Although the fact Pineda had been a victim of a violent crime in 2003 may have had some marginal relevance to Pineda’s state of mind, the trial court’s conclusion any limited probative value of the evidence was substantially outweighed by its likelihood of being misleading and causing confusion was well within its broad discretion. (See *People v. Hovarter* (2008) 44 Cal.4th 983, 1004 [under abuse of discretion standard, “trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice”].) Moreover, in light of the evidence Pineda had actually searched for Rodriguez, hunted him down and attacked him with a tire iron while Cholo stabbed him, any error in excluding the evidence, proffered solely to show Pineda

was afraid of Rodriguez, was plainly harmless. (*People v. Marks* (2003) 31 Cal.4th 197, 226-227; *People v. Watson* (1956) 46 Cal.2d 818, 836.)<sup>2</sup>

## 2. *The Trial Court Did Not Err in Denying Probation*

Pineda concedes he was statutorily ineligible for probation because he was found to have willfully inflicted great bodily injury, but contends the court erred in refusing to grant him probation because this was an “unusual case” that merited application of the “interests of justice” exception. (See § 1203, subd. (e)(3) [prohibiting trial court from granting probation to any defendant who has been found to have “willfully inflicted great bodily injury in the perpetration of the crime of which he or she has been convicted” except in “unusual cases where the interests of justice would best be served” by granting probation]; see also Cal. Rules of Court, rule 4.413(b) [listing factors to consider in determining whether case is exception to general rule prohibiting probation];<sup>3</sup> *People v.*

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<sup>2</sup> Pineda’s contention the exclusion of the evidence denied him due process also fails. (*People v. McNeal* (2009) 46 Cal.4th 1183, 1203 [“[a]s a general matter, the “[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant’s right to present a defense””]; *People v. Mincey* (1992) 2 Cal.4th 408, 440.)

<sup>3</sup> Rule 4.413(c) of the California Rules of Court lists factors for the court to consider in evaluating whether the statutory limitation on probation is overcome: “The following facts may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate. [¶] (1) . . . [¶] (A) The fact or circumstance giving rise to the limitation on probation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; and [¶] (B) The current offense is less serious than a prior felony conviction that is the cause of the limitation on probation, and the defendant has been free from incarceration and serious violation of the law for a substantial time before the current offense. [¶] (2) *Facts limiting defendant’s culpability* [¶] A fact or circumstance not amounting to a defense, but reducing the defendant’s culpability for the offense, including: [¶] (A) The defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence; [¶] (B) The crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation; and [¶] (C) The defendant is youthful or aged, and has no significant record of prior criminal offenses.”

*Superior Court (Dorsey)* (1996) 50 Cal.App.4th 1216, 1229 [“‘unusual cases’ and ‘interests of justice’ must be narrowly construed and . . . limited to those matters in which the crime is . . . atypical or the offender’s moral blameworthiness is reduced”].) In support of his contention probation should have been ordered, Pineda emphasizes he had no prior criminal record.

The trial court acknowledged Pineda’s prior unblemished record, but found it was inadequate to overcome the presumptive bar against probation provided in section 1203. The court explained, “I understand that Mr. Pineda does not have a record, but for committing a crime which the jury found he did in this case, two very serious crimes, he jumped to the very top of seriousness of crimes. As I indicated before, I think it’s extremely fortunate that we’re not here discussing a murder. . . . The brutality and viciousness of attack on this young man leaves this court with no question in its mind Mr. Pineda’s intention on that day was clear and unambiguous. He meant to at the very least inflict serious, serious bodily injury on Mr. Rodriguez, and he accomplished that. . . . And while this court takes no joy in sentencing anyone to jail time or state prison time, justice does demand that an appropriate response be meted out.”

The trial court’s conclusion this was not the type of “unusual case” in which probation should be granted “in the interests of justice” was supported by the record and does not constitute an abuse of its discretion. (See *People v. Stuart* (2007) 156 Cal.App.4th 165, 178-179 [trial court’s determination whether the statutory presumption against probation has been overcome is reviewed for abuse of discretion].)

**DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.